FILED
AUG 21 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

NO. 72-292

MARRERO LAND AND IMPROVEMENT ASSOCIATION, LIMITED,
Petitioner

Versus

JEFFERSON PARISH SCHOOL BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

N. BUCKNER BARKLEY, JR.,
LOUIS H. MARRERO, IV,
403 Barataria Boulevard,
Marrero, Louisiana 70072.

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New Orleans, Louisiana, 70112.

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Of Counsel:

LEMLE, KELLEHER, KOHLMEYER,
MATTHEWS & SCHUMACHER, and
BUTLER, REEVES & McCAY
of New Orleans, Louisiana.

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IN THE

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NO.

MARRERO LAND AND IMPROVEMENT ASSOCIATION, LIMITED,

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JEFFERSON PARISH SCHOOL BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Marrero Land and Improvement Association, Limited, prays that a writ of certiorari issue to the Supreme Court of Louisiana, to review the decision of that Court rendered May 23rd, 1972 denying petitioner's application for certiorari or writ of review to the Court of Appeal, Fourth Circuit, State of Louisiana pursuant to which petitioner sought review of that Court's decision rendered February 7th, 1972, affirming the judgment of the Twenty-Fourth Judicial District Court in and for the Parish of Jefferson, State of Louisiana rendered September 4th, 1970.

OPINIONS BELOW

The memorandum opinion of the Supreme Court of Louisiana is reported at 262 So.2d 39, and is reprinted in Appendix "A" hereof.

The opinion of the Court of Appeal, Fourth Circuit, State of Louisiana is reported at 258 So.2d 585, and is reprinted in Appendix "B" hereof.

No opinion was rendered by the Twenty-Fourth Judicial District Court in and for the Parish of Jefferson, State of Louisiana, in connection with its judgment.

JURISDICTION

This Honorable Court's jurisdiction is invoked under the provisions of 28 U.S.C. Section 1257(3).

Petitioner submits that, by virtue of the premature "taking" of its property by a political subdivision of the State of Louisiana, it has been deprived of its property without due process of law in violation of its constitutionally protected rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States.[1]

THE QUESTION PRESENTED

May a political subdivision of the State of Louisiana through its exercise of the power of eminent domain constitutionally "take" private property for public use in a period of rising land values when it does not possess the financial resources or ability nor a reasonable pros-

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[1] ". . . nor shall any State deprive any person of life, liberty, property without due process of law;"
Chicago, B. & Q. R. Co. v. City of Chicago, 166 U.S. 226, 17 S. Ct. 581, 41 L.Ed. 979 (1897).

pect of such ability to put the property "taken" to such public use.

STATEMENT OF THE CASE

On June 25th, 1969, and in the exercise of its power of eminent domain conferred by the laws of the State of Louisiana,[2] respondent, the Jefferson Parish School Board, a political subdivision of the State of Louisiana, filed suit against petitioner seeking to acquire through expropriation (condemnation) 32.96 acres of land belonging to petitioner and located in Jefferson Parish, Louisiana. The case was tried to the court alone[3] and concluded on July 16th, 1970.

Evidence adduced at the trial established that the acreage sought by the School Board was for the avowed purpose of erecting a "dual" senior high school. The facility as conceived and designed called for the construction of a first school which would occupy approximately half of the acreage sought, and for which construction funds had already been allocated. The second school which was to occupy the balance of the acreage was to be constructed sometime in the future, the construction funds for which were to be provided either by an increase in the parish sales tax, or passage of a bond issue, either of which were entirely dependent upon a favorable vote by the citizens of Jefferson Parish.

Petitioner resisted the School Board's attempt to take the full 32.96 acres, on the ground that the school Board had neither the need nor the financial resources to pro-

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[2] Louisiana Revised Statutes, Title 19, Section 1, et seq.

[3] Louisiana, by statute, has abolished trial by jury in all expropriation cases.
Louisiana Revised Statutes, Title 19, Section 4.

ceed with and complete its proposed public project, and that to permit the School Board to prematurely take petitioner's land in a period of steadily rising land values, amounted to an abuse of the School Board's power of eminent domain.

On September 4th, 1970, the trial court, apparently affording no significance to the School Board's admitted financial inability to proceed with and complete its "public project", and with no written opinion, rendered judgment transferring the entire 32.96 acres sought, in full ownership, to the School Board and awarding to petitioner a dollar amount as the fair market value of the acreage involved at the time of the "taking" as provided by Louisiana law, that being the market value at the date of institution of the suit.[4] Petitioner appealed from that judgment to the Court of Appeal, Fourth Circuit, State of Louisiana.

On appeal petitioner attacked the judgment of the trial court[5] which adjudicated the entire 32.96 acres sought by the School Board, on the ground that to permit the premature expropriation of land which cannot be put to its intended public use within the forseeable future due to the lack of resources and financial ability, amounted to an unconstitutional abuse by the School Board of its statutorily conferred right of eminent domain. Further, petitioner noted in brief[6] that subsequent to the rendition of judgment by the trial court, the citizens of Jefferson Parish in a referendum had rejected the proposed increase in the parish sales tax, and accordingly the School Board

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[4] *Louisiana Ry. & Navigation Co. v. Sarpy*, 125 La. 388, 51 So. 433 (1910).
[5] Tr. 73.
[6] Ibid.

remained without financial ability to complete its public project on the acreage taken.

The Court of Appeal affirmed the trial court's judgment finding that the School Board had showed a need for the entire 32.96 acres. Though noting that:

> ". . . funds have been allocated for the construction of the first school to be known as Daniel Webster Senior High School. However, the funds for the second school to be constructed must be provided either by an increase in taxes or by the passage of a bond issue. . ."[7]

the Court of Appeal in its opinion failed to discuss the effect of the School Board's past and then present financial inability to proceed with and complete its public project, notwithstanding the apparent need. Accordingly, petitioner applied to the Court of Appeal for a rehearing, reurging its contention that to permit any public body to take private property for public use that without the attendant financial resources or ability to put the property to its intended public use in a recognized period of steadily rising land values, constituted an abuse by the School Board of its right and power of eminent domain and effectively denied the private landowner of just and adequate compensation in violation of his rights under the Constitutions of the State of Louisiana and of the United States.[8] Petitoner's application for rehearing was

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[7] Tr. 89; See also Court of Appeal opinion, Appendix "B".

[8] At the time of its application for rehearing, petitioner learned for the first time, and so advised the court, that, due to its continued financial problems and lack of resources, the School Board had abandoned its original concept of a "dual" senior high school. (See Plan at Tr. 100) and had substituted a new and less expensive concept (See Plan at Tr. 99.) *designed to occupy only nineteen of the original* 32.96 *acres taken.*

denied with one of the three judges being of the opinion that the rehearing should be granted.[9]

Thereafter, and again urging that the "premature taking" by the School Board had deprived it of its property without due process of law in violation of its rights under the constitutions of Louisiana and of the United States, petitioner applied to the Louisiana Supreme Court for certiorari and a writ of review to the Court of Appeal, Fourth Circuit.[10] Petitioner's application was summarily denied and it is for review of the Louisiana Supreme Court's denial of petitioner's application for certiorari and writ of review that this petition for a writ of certiorari is filed.

REASONS RELIED ON FOR GRANTING OF WRIT

By denying petitioner's application for certiorari or writ of review, and thereby approving and affirming the decision and judgment, respectively, of the lower appellate and trial courts, the Supreme Court of Louisiana has sanctioned the premature "taking" of private property by a political subdivision of the State which, as of June 25th, 1969, the date of the "taking", did not and does not now, after more than three years, have either the financial resources or ability to put all of the property "taken" to public use. Further, and on the basis of its singular lack of success with the citizens of Jefferson Parish, there is no reasonable prospect that the public funds necessary

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[9] See report of decision by the Court of Appeal, 258 So.2d 585.

[10] Two weeks prior to the filing of petitioner's application, the citizens of Jefferson Parish in a referendum defeated, by a 2-to-1 margin, the school construction bond issue which would have provided the needed public funds for completion of the public project at issue here. Accordingly, the School Board still lacks the necessary financial resources or ability.

to complete its "public project", as now revised can be obtained.

As a result, the respondent School Board as well as all other political subdivisions of the State of Louisiana, though financially unable to put condemned property to public use, may, nevertheless, force private citizens to give up land at current values and then "bank" their holdings as a hedge against rising land values, or hold the property until it has appreciated sufficiently in value and then sell it at a profit or exchange it for more or better acreage, all at their discretion. Thus, government, with the overwhelming advantage which the power of eminent domain affords, is free to engage in the business of real estate to the distinct disadvantage of the private landowner.

Accordingly, and though the constitutional requirements of "procedural" due process may have been satisfied in this "taking" by the School Board, the undisputed facts disclose a clear misuse and abuse of the right of eminent domain through the "taking" of more land than the School Board can reasonably expect to be able, financially, to put to public use. Clearly then, the requirements of "substantive" due process guaranteed by the Fourteenth Amendment to the Constitution of the United States have not been met, and for this reason, petitioner respectfully submits that its petition merits favorable consideration.

ARGUMENT

At the outset, it should be pointed out that petitioner does not dispute the need of the respondent School Board to construct two additional senior high schools to meet

the educational needs of Jefferson Parish. In fact, by agreement and stipulation,[11] petitioner released from further litigation the nineteen acres required by the School Board to construct its two schools under a revised plan made necessary again by the School Board's financial disability. Even this revised plan, however, is in jeopardy due to money problems encountered by the School Board.

On the other hand, petitioner, through the actions of the School Board and the decisions and judgments of the Courts of Louisiana, has been involuntarily deprived of 32.96 acres of valuable land for thirteen of which there are neither present plans nor financial resources available or expected to put those acres to public use. It is this acreage, therefore, which the School Board is now free to "bank" or hold and later sell or exchange at its discretion, and it is this abuse of the right of eminent domain which petitioner respectfully submits is violative of its right to due process under the Fourteenth Amendment.

It is petitioner's earnest submission that the respondent School Board, in particular, as well as other political subdivisions of the State of Louisiana, in general, should not be permitted, through the exercise of the power of eminent domain, to engage in the real estate business under the guise of taking private property for public use but with no financial ability nor a reasonable prospect of such ability, to put the property to such public use. If such conduct is permitted, these political subdivisions will be free to remove land from commerce for unknown lengths of time, thereby compounding their own financial problems by removing such land from the prop-

[11] Tr. 87-89

erty tax rolls with the consequent reduction of tax revenues ordinarily generated by such property and sorely needed in these inflationary times. Further, such public bodies will be free to deal in real estate in competition with the private citizen, unencumbered by income and other taxes regularly imposed on land transactions between private citizens.

Clearly, the awesome power of eminent domain was never meant to be used in such a manner and with such results, and it is for the prevention of the unconstitutional abuse of this awesome power that petitioner respectfully seeks the protection of this Honorable Court.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari to the Supreme Court of Louisiana should be granted to the end that its decision in this cause will be reviewed, vacated and set aside, and that this cause will be remanded to the Twenty-Fourth Judicial District Court in and for the Parish of Jefferson, State of Louisiana, with instructions to set aside or, alternatively, amend its judgment and return to petitioner, in full ownership, all acreage not heretofore released by petitioner pursuant to its agreement and written stipulation.[12]

Respectfully submitted,

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[12] Tr. 97-99

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By _____
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Attorneys for Petitioners

Of Counsel:

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MATTHEWS & SCHUMACHER
BUTLER, REEVES & McCAY, of
New Orleans, Louisiana

CERTIFICATE OF SERVICE

I, the undersigned member of the bar of this Court, do hereby certify that I have served two copies of the foregoing Petition for a Writ of Certiorari upon Wallace C. LeBrun, Esq., attorney for respondent and all interested parties in the Supreme Court of Louisiana, by mailing the same to him, postage prepaid, at 1100 No. Causeway Boulevard, Metairie, Louisiana, this day of August, 1972.

George B. Matthews

APPENDIX A

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

May 23, 1972

NO. 52,395

JEFFERSON PARISH SCHOOL BOARD

versus

MARRERO LAND AND IMPROVEMENT ASSOCIATION, LTD.

In re: Marrero Land and Improvement Association, Ltd. Applying for certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Jefferson.

Writ denied. Under the facts, we find no error of law.

/s/ AT Jr.
/s/ EHMcC
/s/ WBH
/s/ JWS
/s/ FWS
/s/ JAD

Clerk's Office
Supreme Court of Louisiana
New Orleans
May 23, 1972
/s/ Charles F. Seemann, Sr.
Deputy Clerk

APPENDIX B

NO. 4743

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

JEFFFRSON PARISH SCHOOL BOARD

versus

MARRERO LAND AND IMPROVEMENT ASSOCIATION, LTD.

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA DIVISION "B", NO. 120-091, HON. FRANK V. ZACCARIA, JUDGE

JAMES C. GULOTTA
JUDGE

(Panel composed of Judges Harry T. Lemmon James C. Gulotta, and Edward J. Stoulig.)

JOHN J. MAXWELL
WALLACE C. LEBRUN
Plaintiff-Appellee

BUTLER, REEVES AND McCAY,
PERRIN C. BUTLER
LOUIS H. MARRERO, IV
N. BUCKNER BARKLEY, JR.,
Defendant-Appellant

FEB. 7, 1972

Affirmed

The Jefferson Parish School Board seeks to expropriate approximately 32.96 acres of unimproved ground belonging to the Marrero Land and Improvement Association, Ltd., appellants. The acreage sought is part of a 400 acre tract of land owned by defendant and is located on the west bank of the Mississippi River in Marrero in Jefferson Parish. The particular area is in the northeast section of the larger tract which is bounded on the north by the 16th Street Canal; on the west by Barataria Boulevard; to the rear and south by a utility company servitude; and on the east by a trailer court owned by the defendant.

The proposed use by the School Board is for the immediate construction of a senior high school on that part of the ground closest to the 16th Street Canal and for the future construction of an additional senior high school in the rear area of the ground.

Plaintiffs seek the expropriation of the subject property for the sum of $280,160, the value placed on the property by the school board appraisers. The defendant filed peremptory exceptions which, in effect, state that more land is being sought than is required and further that there is a non-joinder of parties in that the land is burdened with two leases, one of which is a mineral lease. Defendant claims that the lessees must be made parties defendant since they are indispensable parties. Certain other dilatory exceptions were filed.

Defendant, in his answer, avers that the land is not required by the school board presently or in the foreseeable future and further that the evaluation placed by the school board is $8,500 per acre while the true

value of the property is $30,000 per acre. By stipulation, the defendant waived all exceptions filed and all defenses save that plaintiff has not offered just compensation to the defendant including severance damages and that plaintiff seeks to expropriate more land than is necessary for its purposes. It was further stipulated that all mineral rights were to the reserved to the defendant and to its lessee. However, we are informed in argument by the school board and by the defendant, Marrero, that there is no question of severance damages posed for our consideration. The only issues, therefore, are whether or not more land is being sought by the school board than is required to be expropriated and whether or not the school board has offered just compensation for the value of the land taken.

In connection with the need for land by the school board for the construction of an additional senior high school, plaintiffs offered the testimony of Peter C. Bertucci, the Superintendent of Schools of Jefferson Parish. He testified that there are only two senior high schools located on the West Bank, both of which are overcrowded and are being platooned with morning and afternoon classes. Based on projected enrollment in 1970 and 1971, an additional 76 classrooms will be needed. In the 1971-1972 school year the needs will be increased to 101 additional classrooms. Projected over a period of five years, the need will be 193 additional classrooms for senior high school students. He stated further that the proposed immediate construction will make available 100 additional classrooms; however, upon completion, the amount of classrooms available will be insufficient, and that the construction on the second school should commence immediately after the first school is completed. Bertucci

stated that the recommended area for the site of a senior high school is a minimum of 30 acres plus an additional acre for each 100 pupils predicated on an ultimate maximum enrollment. With an immediate anticipated enrollment of 1,000 students, the minimum land requirement, therefore, as recommended, is 40 acres. He testified that funds have been allocated for the construction of the first school to be known as Daniel Webster Senior High School. However, the funds for the second school to be constructed must be provided either by an increase in taxes or by the passage of a bond issue. He testified further that the central location and accessibility to transportation influenced the selection of this particular site.

The trial judge readily disposed of the issue whether or not the school board is seeking to expropriate more land than is immediately required. In his reasons he stated:

> "I feel that this is one of the few examples of the type of planning that we have needed in the Parish for the past twenty years. Looking forward to the future might save us some headaches and give us the type of buildings and construction and add a little savings to the taxpayer. The Court feels that the need has been shown for this much land. They could actually use more if they could afford it. The Court therefore feels that the need has been established and shown and it is not arbitrary and capricious and on the other hand it is commendable for the forethought that has gone into the project."

We agree with the conclusions reached by the trial judge as well as with the soundness of his reasons. The

School Board clearly showed a present and immediate need for the entire area sought to be expropriated and further made a showing of good faith in seeking the expropriation of the entire tract. It is well settled in our jurisprudence that the extent of the property to be expropriated and the location are within the sound discretion of the body possessing the power of eminent domain and this determination will not be interfered with if made in good faith. *Greater Baton Rouge Port Commission v. Watson*, 224 La. 136, 68 So.2d 901 (1953); *Evangeline Parish Police Jury v. Deville*, 247 So.2d 258 (La. App. 3rd Cir. 1971).

The remaining question to be considered by the court, involving the value of the land, required an analysis of the comparables used by the appraisers who testified for the Board and for the defendant. Two realtors and appraisers, Robert W. Weigand and Joe Billa appraised the property at the request of the School Board, while two other realtor appraisers, Omer F. Kuebel and Charles J. Derbes, Jr., appraised the property at the request of Marrero. Weigand on February 26, 1970, made an appraisal of the entire 32.96 acre tract in the sum of $197,480.40 or approximately $6,000 per acre. On November 20, 1968, the appraisal he had placed on the ground was $280,160, or approximately $8,500 per acre. It is to be noted that the subject property is zoned R-1, which is residential—single family dwelling. Billa, on July 3, 1970, placed an appraised value for the entire 32.96 acre tract at the sum of $196,164, or from $5,653 to $6,372 per acre. However, he signed the original $280,160 appraisal made by Weigand, the amount offered by the School Board. Kuebel, defendant's appraiser, on the other hand, placed a value of $428,400 for the subject property,

or $13,000 per acre as raw, underdeveloped land and $14,597.83 per acre were we to consider the use of the property for subdivision development. Derbes, the remaining appraiser, placed an evaluation of $13,000 per acre.

It is uncontroverted that the highest and best use of the land is for subdivision development. The appraisers, however, were in conflict as to the amount of consideration that should be given to the present zoning of R-1 as compared to the probability of zoning changes that might be made in the near future to either multiple family dwellings or commercial usage.

It is significant that Weigand considered 11 comparables in arriving at his appraisal determinations and that Billa used 10 of those together with two additional comparables. For all intents and purposes, they used the same comparables with three exceptions. While differing as to the extent of the adjustments up or down, they arrived at a similar evaluation. (See appendix attached hereto.) It is also significant that Kuebel and Derbes relied on many of the same comparables. This was done, however, to a lesser extent than in the case of Weigand and Billa. Derbes considered two of the comparables offered by Weigand and Kuebel used one of those considered by Weigand. Needless to say, there was a variance in these evaluations; however, both Kuebel and Derbes placed an evaluation of $13,000 per acre for the subject property.

It appears from the record that different evaluations are the result of several factors. Weigand and Billa considered to a lesser extent the growth potential in arriving at the present market value, while Kuebel and Derbes

considered to a greater extent the future prospect for development considering the economic and potential economic growth and projected population increase. To varying degrees, each considered the relationship between the comparables relied upon and the subject property involving location, market conditions at the time, physical characteristics, highest and best use, other sales, comparative size, date of purchase, zoning, desirability and improvements. The value per acre depends to a large extent on the weight that each appraiser gives to those factors either by way of an upward or downward adjustment. This accounts for the divergence in evaluation.

The trial judge in arriving at a value of $378,504.10 used a basis of $11,483.65 per acre. Contrary to appellee's argument, the trial judge in determining the market value gave considerable weight to the future prospect for development, considering potential economic growth and projected population increase. We find no fault with this. Had he not done so, he would not have set an evaluation so close that offered by Kuebel and Derbes, the appellant's appraisers. We might observe that the record contains some testimony of a conjectural and speculative nature when considering future economic growth, extensions of expressways such as the Dixie Freeway, the Barataria Boulevard widening and the extension of the Lapalco Right of Way as well as other projections. The trial judge property could not place as much weight on these projections as desired by appellants and suggested by the appraisers.

In the case of *State, Through Department of Highways v. Kennedy*, 193 So.2d 848 (La. App. 1st Cir. 1966); writ

denied, involving a question of quantum only, the court stated at page 853:

> "* * *Where the experts differ as to the valuation of land the trial judge is in a better position to determine their credibility and the weight to be accorded their testimony than is the appellate court and, unless manifest error is shown, his decision should not be disturbed on appeal. Central Louisiana Electric Company v. Williams, La. App., 181 So.2d 844."

See also: *Florida Gas Transmission Company v. Munson*, 198 So.2d 750 (La. App. 1st Cir. 1967); writ denied.

After considering the entire record, as well as an analysis of the comparables, we are of the opinion that the trial judge did not commit manifest error in determining the amount of the evaluation of the 32.96 acres sought to be expropriated by the Jefferson Parish School Board. On the contrary, we agree with his evaluation and determination. Accordingly, the judgment is affirmed. Costs are to be paid by the plaintiff.

AFFIRMED

PAGE BOUND VERTICAL

DATE	COMPARABLES	TOTAL SALE PRICE	NO. OF ACRES	PRICE PER ACRE FOR COMPARABLE	EVALUATION OF SUBJECT PROPERTY AFTER ADJUSTMENTS			
					Weigand	Billa	Kuebel	Derbes
12/19/69	Volpi to Abraham and Winston	38,500.00	4.4	$ 8,675.00	—20% $6,940	—30% $6,073		
12/31/69	Whittington to Tallimo	400,000.00	35.76(E)	11,184.12	—33% 7,456		$14,000	
2/14/69	Bloomfield to Dormal	2,800,000.00	1500.00	1,847.00		(F)		
5/ 3/67	Gattuso to Arceneaux Jr.	427,000.00	63.97	6,675.00		6,680	(G)	
4/13/67	Manor Heights to Jefferson Parish School Board	102,603.00	10.00	10,260.30			+30% 13,200	$12,600
3/ 8/68	Volpi to Abraham	112,300.00	12.17	9,227.61			12,456	10,300(H)
7/10/68	Woodland West to Catholic Church	108,000.00	8.526	12,667.00		(I)	13,000	13,400

(E) Purchase of one-half divided interest in 71.53 acres, or 35.76 acres.

(F) Did not give comparable figure for subject property—used only to show that subject property located one and one-half miles north of comparable has a much greater value.

(G) Did not consider this comparable because circumstances of sale made the sale suspect—additionally, no ingress or egress.

(H) The variance in evaluation in this interest results from Derbes using the difference in size as a factor in arriving at a minus adjustment for subject property.

(I) Billa is of the opinion that this is not a valid comparable because it is a subdivided area with curbs, streets, and improvements.

DATE	COMPARABLES	TOTAL SALE PRICE	NO. OF ACRES	PRICE PER ACRE FOR COMPARABLE	EVALUATION OF SUBJECT PROPERTY AFTER ADJUSTMENTS			
					Weigand	Bilis	Kuebel	Derbes
3/11/65	Spalding Enterprise to Manor Heights Co., Inc.	$260,000.00	34.68	$7,497.12	+19%	—15%	(A)	
4/ 9/65	Lawrence to G.L.S., Inc.	99,709.78	13.27	7,513.92	$8,997 +8%	$6,372 —20%		$11,800
	Lawrence to G.L.S., Inc.		14.77	7,514.00	8,114 +8%	6,012 —20%		
7/30/65	Marcia Development Corp. to Manor Heights	329,993.25	52.25	6,315.60	8,114 +22%	6,012 —10%		
1/19/66	Gregson to Manor Heights	45,000.00	6.087	7,392.80	7,704 (B)	5,684 —20%		
2/10/66	Jefferson Lessor Corp. to Willowdale	265,000.00	38.83	6,824.62	+12%	6,000 —15%		
4/29/66	Manson to Cosmopolitan	45,000.00	3.9694	11,336.49	7,642 —19%	5,800 —45%		12,300
3/14/68	Volpi to Abraham	112,300.00	12.17	9,227.61	9,182 —4%	6,235 —35%		
9/ 5/69	Mitchell and North to McBride	480,451.00	85.02	5,660.75	8,955 +5%	5,993 (C)	(D)	
					5,943	5,653		

(A) Kuebel did not use this comparable because he stated the size was irregular and suggests that perhaps other consideration was used.

(B) Record does not disclose adjustment for subject property.

(C) Billa is of the opinion that this comparable is even with subject property and evaluates subject property at $5,653.

(D) Kuebel is of the opinion that this is not a valid comparable because comparable is located 2½ miles from expressway and subject property is one-half mile from expressway. Additionally, it is inaccessible in present state because of high foliage.

FILE COPY

DEC 14

MICHAEL RODAK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-292

MARRERO LAND AND IMPROVEMENT ASSOCIATION, LIMITED,

Petitioner,

versus

JEFFERSON PARISH SCHOOL BOARD,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

No. 72-292

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Petitioner,

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Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Jefferson Parish School Board, respondent herein, opposes the petition for a writ of certiorari which was filed herein by Marrero Land and Improvement Association, Limited, petitioner herein, and respectfully urges that it be denied.

ARGUMENT

Based on great public need and on the opinion of the Court of Appeal, Fourth Circuit, State of Louisiana, writs denied, affirming the judgment of the trial court, the School Board requested an agreement from the petitioner owner to file the Joint Stipulation & Agreement to Release Certain Property from Further Litigation. The purpose of the School Board's request was to make it possible for the School Board to immediately begin construction of the school buildings which are desperately needed. This stipulation, in no way, refers to the total amount of land needed for the schools' purposes, and neither was it so intended.

The parties simply stipulated that the approximately nineteen (19) acres referred to on the blackline print, which was annexed to the stipulation, would be eliminated from further litigation.

Petitioner erroneously contends that the said stipulation clearly establishes that there has been a complete abandonment by the School Board of its public project as originally conceived and presented to the Trial Court. Such is definitely not the case. To be sure, the antithesis is true. As provided in the joint stipulation, the very purpose thereof was to allow the immediate start of construction.

The whole idea of the joint stipulation was that both parties knew that the School Board had the right of eminent domain and that, at the very least, the Courts would maintain the Board's right with respect

to that part of the property which was referred to in the stipulation. The parties agree that that much land was needed immediately to begin construction of the buildings only. How much more land that is needed for other school purposes, such as yard area, etc., and the amount of money that was to be paid for it by the School Board is what was supposed to be argued in petitioner's application for rehearing on appeal.

Petitioner refers to the change in the design of the school buildings as though the said change was a critical point in his case. That position is untenable and is not worthy of serious consideration. The only purpose of the School Board in expropriating the amount of land that it did, was to establish high school facilities thereon, because those facilities were needed. Under the contract which was let to Bartley, Inc. those needs will be only partially satisfied.

The dual school concept has not at all been abandoned. In fact, the blackline print substantiates that future construction is contemplated. The only change was one of design of the buildings. One hundred and twenty classrooms are planned.

As stated in petitioner's petition and application for a rehearing to the Court of Appeals, Mr. Bertucci testified at the trial that a single story, two school concept was planned and would be paid for with money already allocated for a school on the front half of the condemned acreage. As a matter of fact, a single story, two school concept is presently being constructed and the money therefor is already allocated for the proj-

ect. Moreover, the ultimate completion of the dual school concept is still contingent upon the School Board's acquisition of additional funds.

The School Board's plans are not based on some vague and hazy plan to build in the unforeseeably distant future. Petitioner admits, in the very outset of his argument, that respondent is in need of the additional schools to meet the educational needs of Jefferson Parish.

Insofar as this case is concerned, the design of the school buildings are of no consequence. The only issues to be decided herein are, as stated in the Court of Appeal original opinion, 1) whether or not more land is being sought by the School Board than is required to be expropriated, and 2) whether the School Board has offered just compensation for the value of the land taken. Nothing has changed to effect either of those issues.

Referring to petitioner's petition for a writ of certiorari, it appears therefrom that petitioner has failed to ask for reconsideration of quantum. Thus, the only issue to be considered is whether the School Board wrongfully expropriated more land than was immediately required. The facts and the jurisprudence made it abundantly clear that the School Board needs all of the land which it has expropriated herein.

Petitioner now contends that it was deprived of constitutional due process of law. That was never an issue in the trial court, nor was it argued in its original appeal. There were four specifications of error and five

principles of law that are stated in petitioner's original brief. Not one of those items referred to a constitutional issue.

Further, it was stated in the Court of Appeal original opinion, that it was stipulated that "the defendant waived all exceptions filed and all defenses save that plaintiff has not offered just compensation to the defendant . . . and that plaintiff seeks to expropriate more land than is necessary for its purposes."

CONCLUSION

The Jefferson Parish School Board sincerely submits that it is in need of every bit of the land that was expropriated. As a matter of fact, it is in need of much more land than that which is in question. It submits that it has not abandoned its dual school concept and that it still plans to effect such construction. But, even if it would be conceded, in arguendo only, that the dual school concept had been abandoned, respondent would still have been within its rights to expropriate the amount of land in question. The 32.96 acres is actually needed for the facility which is now under construction. That facility will have approximately 1600 senior high school students. As stated on trial, and acknowledged on appeal, the recommended area for the site of a senior high school is a minimum of 30 acres plus an additional acre for each 100 pupils predicated on an ultimate maximum enrollment. The trial Court praised respondent for its forethought and planning, and the Appeal Court concurred.

Accordingly, respondent respectfully urges this Honorable Court to deny petitioner's application for a writ of certiorari.

Metairie, Louisiana, this 7th day of December, 1972.

Respectfully submitted,

WALLACE C. LeBRUN
1100 North Causeway Boulevard
Metairie, Louisiana 70004

ATTORNEY FOR
RESPONDENT

CERTIFICATE OF SERVICE

I, the undersigned member of the bar of this Court, do hereby certify that I have served three copies of the foregoing Opposition to Petition for Writ of Certiorari upon George B. Matthews, Attorney for petitioner, by mailing same to him, postage prepaid, at 1800 National Bank of Commerce Building, New Orleans, Louisiana, 70112.

December 7, 1972.

Wallace C. LeBrun